

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BART MAVERICK YAGLA, JR.,	)	
	)	
Plaintiff,	)	Civil Action No. 2:14-cv-181
	)	
v.	)	District Judge Arthur J. Schwab
	)	
KENNETH SIMON; CITY OF	)	Magistrate Judge Lisa Pupo Lenihan
PITTSBURGH; and COUNTY	)	
OF ALLEGHENY,	)	
	)	
Defendants.	)	

**MEMORANDUM ORDER**

Plaintiff commenced the above-captioned case at Civil Action No. 2:14-cv-181 by filing a Motion for Leave to Proceed in Forma Pauperis on February 10, 2014. (ECF No. 1.) Plaintiff's Motion was granted on February 13, 2014 and the Clerk was directed to file the Complaint. The case was referred to Magistrate Judge Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules of Court.

The Magistrate Judge's Report and Recommendation (ECF No. 68) filed on March 3, 2015, recommended that the Motion to Dismiss the Second Amended Complaint filed by the City of Pittsburgh (ECF No. 55) be granted, and the consolidated Motion to Dismiss and/or to Strike portions of the Second Amended Complaint filed by the County of Allegheny (ECF No. 57) be granted as to the County's Motion to Dismiss and denied as to the County's Motion to Strike. It was further recommended that certain § 1983 claims be dismissed with prejudice and that certain § 1983 claims be dismissed without prejudice as discussed in the Report and

Recommendation. Service was made on the pro se Plaintiff at his address of record, and on counsel of record by electronic mail. The parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Rule of Court 72.D.2, the parties had fourteen (14) days from the date of service to file objections to the Report and Recommendation. No objections were filed.

After review of the pleadings, documents in the case, together with the Report and Recommendation, the following Order is entered:

**AND NOW**, this 24<sup>th</sup> day of March 2015, it is hereby **ORDERED** that the Motion to Dismiss the Second Amended Complaint filed by the City of Pittsburgh (ECF No. 55) is **GRANTED**.

**IT IS FURTHER ORDERED** that the consolidated Motion to Dismiss and/or to Strike portions of the Second Amended Complaint filed by the County of Allegheny (ECF No. 57) is **GRANTED** as to the County's Motion to Dismiss and **DENIED** as to the County's Motion to Strike.

**IT IS FURTHER ORDERED** that the following § 1983 claims are **DISMISSED WITH PREJUDICE**:

- (i) alleged violations of the Fifth Amendment;
- (ii) alleged violations of the Eighth Amendment;
- (iii) alleged violations of the Fourteenth Amendment Equal Protection Clause;
- (iv) alleged violations of the Fourteenth Amendment Due Process clause arising from: (a) the withdrawal of a potential plea offer; (b) the Commonwealth's reliance on officer Scarpane's testimony; (c) the *nolle prosequing* of Plaintiff's criminal charges; and (d) the violation of a Rule of Professional Responsibility; and
- (v) alleged violations of the Fourth Amendment arising from: (a) Plaintiff's false arrest; (b) Plaintiff's false imprisonment; and (c) a judicial officer's probable cause determination.

**IT IS FURTHER ORDERED** that the following § 1983 claims are **DISMISSED WITHOUT PREJUDICE** and that Plaintiff shall have until **April 17, 2015** to file an amended complaint as to these claims only:

- (i) Plaintiff's Fourth Amendment malicious prosecution claim;
- (ii) Plaintiff's Fourteenth Amendment due process claim premised upon an alleged fabrication of evidence and/or *Brady* violation; and
- (iii) Plaintiff's municipal liability claims.

The Court will dismiss these claims with prejudice if Plaintiff fails to file an amended complaint by the **April 17, 2015** deadline.

**IT IS FURTHER ORDERED** that the Report and Recommendation (ECF No. 68) of Magistrate Judge Lenihan, dated March 3, 2015, is adopted as the Opinion of the Court.

s/ Arthur J. Schwab  
Arthur J. Schwab  
United States District Judge

cc: BART MAVERICK YAGLA, JR.  
LM 8449  
SCI Mercer  
801 Butler Pike  
Mercer, PA 16137

All counsel of record  
*Via Electronic Mail*